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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Reply Comments of Covad Communications on Bellsouth Telecommunications, Inc., Petition For Forbearance, WC Docket No. 03-220*

Dear Ms. Dortch:

Covad Communications herewith submits its Reply Comments in opposition to the petition for forbearance filed by BellSouth Telecommunications, Inc., in the above-referenced docket.[1] In its initial Opposition, Covad made clear that, when unmasked, BellSouth's petition really amounted to an attempt to perform an end-around even the meager broadband unbundling requirements the Commission retained for the enterprise market in the *Triennial Review Order*. Covad explained that, after receiving a staggering amount of deregulation in the *Triennial Review Order* for broadband transmission facilities used to serve both the mass market and the enterprise market, BellSouth and its Bell supporters had arrived at the Commission seeking the one means of UNE broadband transmission access still left on the table for competitors – access to TDM transmission capabilities.[2] The Bells only feebly attempt to defend the premises of BellSouth's petition. Accordingly, Covad uses these reply comments to briefly respond to the few unsupported arguments the Bells mount in defense of BellSouth's request.

Without an iota of evidentiary support, the Bells baldly assert that ILECs and CLECs stand on equal footing when competing to serve multipremise developments.[3] They even go so far as to assert that competitors enjoy competitive advantages *over* the ILECs in bidding to serve multipremise developments.[4] Of course, in making such assertions, the ILECs conveniently ignore any mention of their historical monopoly power in providing telecommunications services to practically the entire country, and the continuing legacy advantages of that monopoly power, including ownership and control of the largest, most expansive network of central offices, rights-

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[1] *Pleading Cycle Established for Comments on BellSouth's Petition for Forbearance from Application of Sections 251(c)(3), (4) and (6) in New-Build, Multipremises Developments*, Public Notice, WC Docket No. 03-220, DA 03-3146 (rel. Oct. 9, 2003).

[2] *See* Opposition of Covad Communications to BellSouth Telecommunications, Inc., Petition for Forbearance in WC Docket No. 03-220 (filed Nov. 10, 2003).

[3] *See* SBC Comments at 1, Verizon Comments at 1.

[4] *See* SBC Comments at 2.

of-way, ducts, conduit, and transmission facilities of any carrier – built and paid for with over one hundred years of monopoly rents from a captive ratepayer base. No matter what their unsupported protestations to the contrary, no CLEC can match the ILECs' inherent, unique advantages as a government-sanctioned monopoly. Moreover, contrary to the Bells' assertions that they stand on an "equal footing" to CLECs, BellSouth's petition does nothing to prevent ILECs from invoking all the market power of their historic, legacy advantages against CLECs in serving multipremise developments. The Bells' comments offer nothing to diminish the apprehension that grant of BellSouth's forbearance request will lead not to more, but quite clearly to less, competition to serve multipremise developments.

In fact, these apprehensions are shared not by competitors alone, but by the very customers who stand to be most greatly burdened by the decreased competition that BellSouth's petition would bring about. The Real Access Alliance, comprised of the associations representing the building managers and developers who contract with carriers to provide advanced communications services to their multipremise developments, have registered their own strong opposition to BellSouth's forbearance request.[5] The Bells might claim that unbundling requirements deter the deployment of new advanced communications infrastructure deployment to multipremise developments, but it is clear that the actual owners and operators of multipremise developments do not share the Bells' fears. Instead, the actual owners and operators of these developments are fearful of exactly the opposite result if the BellSouth petition is granted – fewer competitors to choose from, and decreased access to the innovation and efficiencies that competition brings.[6]

Covad also responds to Qwest's preposterous assertion that ILECs in fact are not ILECs under the Act where multipremise developments are concerned. According to Qwest, multipremise developments are not encompassed within an ILEC's section 251 obligations where such developments were erected after the Act's passage. Thus, according to Qwest, under section 251(h)(1) of the Act, the ILEC is no longer an ILEC with respect to such developments.[7] The Commission should note that Qwest's logic is not limited to multipremise developments alone, but carries far-reaching ramifications. Under Qwest's conception, an ILEC would cease to be an ILEC every time a new house was built – even one right next to houses built before 1996 and therefore still subject to ILEC unbundling obligations. Qwest's construction of the statute is clearly ridiculous – as the language in the Act makes clear, an ILEC is defined with respect to "an area," not with respect to a specific location within that area.[8] Whatever "an area" means – whether that be a local calling area, a municipality, a LATA, or an entire state – it certainly does not mean an individual customer location, as Qwest seems to think.

Once again, Covad asks the Commission to ask itself what regulatory obligation, exactly, so tremendously burdens the Bells' deployments to multipremise developments. The

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[5] *See* Comments of the Real Access Alliance.

[6] *See id.* at 3-4.

[7] *See* Qwest Comments at 4.

[8] 47 U.S.C. § 251(h)(1).

Commission's new rules implementing section 251 have already (1) completely exempted incumbent LECs from providing access to the packetized broadband transmission capabilities of hybrid fiber-copper loops as UNEs;[9] (2) completely exempted incumbent LECs from providing access to the broadband transmission capabilities of fiber-to-the-home loops as UNEs, in both new-build and overbuild situations;[10] (3) eliminated even its limited existing UNE rules for packet-switching;[11] (4) limited competitors to accessing UNE broadband transmission facilities in the enterprise market with legacy TDM-based interfaces;[12] and (5) decided to phase out and ultimately eliminate the most widely deployed means of providing competitive broadband services in the mass market, namely the UNE high frequency portion of the loop, thereby allowing the ILECs to *remonopolize* competitive mass market broadband services.[13] The Commission's *Triennial Review Order* already provides the incumbent LECs with a staggering amount of deregulation – for both mass market and enterprise loop facilities. The one form of UNE broadband transmission the Commission has left on the table for competitive carriers is enterprise market access through legacy TDM-based interfaces. The Commission should not allow the Bells, in the guise of relief for "multipremise developments," to hoodwink it into taking even that access off the table.

Respectfully submitted,

___/s/ Praveen Goyal_____

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[9] *See Triennial Review Order* at paras. 285-297.

[10] *See Triennial Review Order* at paras. 273-284.

[11] *See Triennial Review Order* at paras. 535-541.

[12] *See Triennial Review Order* at paras. 298-342.

[13] *See Triennial Review Order* at paras. 255-269.